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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

KIDWELL, MICHELE M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 11/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Tale

Office Action Summary

Application No.

10/003,308

Applicant(s)

DREVIK ET AL.

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15 is/are allowed.
- 6) ☒ Claim(s) 1-11, 13, 14 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Hansson et al. (WO 96/20669).

With respect to claim 1, Hansson et al. (hereinafter "Hansson") discloses an absorbent article which as a substantially elongated shape with a longitudinal direction and a transverse direction and exhibits two side edges, a front edge and a rear edge, a front portion and a rear portion, and a central portion situated between the front portion and the rear portion (figure 1), said article furthermore exhibits a liquid pervious cover layer and a liquid impervious cover layer and an absorbent body (page 5, lines 21 – 32) wherein the rear portion of the absorbent body comprises a layer (6) that is split into a substantially Y-shaped body having a first leg and a second leg with a gap between the legs where an angle is defined between the first leg and the second leg (page 7, lines 25 – 29) wherein an elastic member (5) is placed between the first leg and the second leg which elastic member said elastic member essentially extends in the longitudinal direction and is in the form of a band as set forth on page 9, lines 1 – 30.

The examiner contends that a band is merely a strip of material and that the elastic member (5) of Hansson may be considered as a band.

As to claim 16, see the rejection of claim 1 and page 10, line 26 to page 11, line 12.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 – 11 and 13 – 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansson et al. (WO 96/20669).

With reference to claim 2, the applicant is reminded that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

The examiner contends that the Hansson reference is fully capable of bending the rear portion in a substantially parabolic shape since it too has an elastic member meeting the claimed limitations and is fully capable of performing the recited function.

As to claims 3 and 4, see page 9, lines 18 – 19.

With reference to claim 5, see page 9, lines 32 – 34.

Regarding claim 6, see page 7, lines 21 – 25.

With reference to claims 7 – 11, absent a critical teaching and/or unexpected result, the examiner contends that the claimed limitation is an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art.

As to claims 13 and 14, see figures 1 – 2.

Response to Arguments

Applicant's arguments with respect to claims 1 and 16 have been considered but are moot in view of the new grounds of rejection.

With respect to the applicant's argument regarding claim 16, the examiner contends that Hansson discloses a sanitary napkin that will adopt different shapes during use (page 10, lines 26 – 30) which would allow the to some extent separation at the slit (14, 22 and/or 23). The angle can be defined as any measurement of the spacing between any or all of the angles with the first and second leg being considered as the outermost left and right side edges. Likewise, the measured angle can be considered as increasing if any angle is measured greater than the angle originally measured. Alternatively, Hansson discloses that the central slit can extend with two divergent slits (page 11, line 36 to page 12, line 5) which would also provide a similar situation.

With reference to the applicant's argument regarding claim 2, parabolic is defined as substantially bowl shaped. As noted by the applicant, Hansson provides an article that can reasonably be provided as C-shaped (page 12, 2nd paragraph of applicant's remarks filed August 19, 2005). The examiner contends that a C-shaped article is substantially bowl shaped – i.e. substantially parabolic.

With respect to claim 7, see the examiner's comments addressing the applicant's arguments with respect to claim 16.

Allowable Subject Matter

Claim 15 is allowed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michele Kidwell
Primary Examiner
Art Unit 3761